UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re: LETTER OF REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE FROM THE DISTRICT COURT IN BIALYSTOK, POLAND	)))))	No. 11 C 7153

EX PARTE PETITION OF THE UNITED STATES FOR AN APPOINTMENT OF COMMISSIONER TO PROVIDE ASSISTANCE TO FOREIGN TRIBUNAL PURSUANT TO 28 U.S.C. § 1782

The United States of America, by Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, petitions this court for an order pursuant to 28 U.S.C. § 1782, and in support, provides the following:

1. The United States has an obligation to render such assistance pursuant to and in accordance with the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters ("Hague Convention"), entered into force between the United States and Poland on October 7, 1972, TIAS 7444, 23 UST 2555.

2. This petition is made pursuant to a letter rogatory executed on April 15, 2010 in the above-identified court in the maintenance proceedings entitled *Matter of Wieslaw Jan Swierzyna v. Aleksandra Babinska*. The letter of request, the rogatory questions, and the district court papers executed in the Polish language, together with a translation of each from Polish to English, are attached hereto as Exhibit A.

3. This petition is made on the grounds that DePaul University, a private catholic university in Chicago in this district, having been asked to voluntarily accept service of the Polish

district court papers and provide answers under oath to the questions posed by the Polish district court in the rogatory letter, has failed to voluntarily comply therewith[1]. (*see* Exhibit B)

4. Under Article VI of the United States Constitution, treaty provisions, such as those governing this petition, are the law of the land, are on an equal footing with acts of Congress, and are binding on the courts. *See Bell v. Clark*, 437 F.2d 200, 203 (4th Cir. 1971); *In Re Letter Rogatory from Local Court,* 154 F.R.D. 196, 199 (N.D. Ill. 1994).

5. The Hague Convention affords each signatory nation the use of the judicial processes of other signatory nations where such assistance is needed in civil or commercial matters "to facilitate the transmission and execution of Letters of Request and to further the accommodation of the different methods which they use for this purpose." *Preamble to the Hague Convention.* Both Poland and the United States are signatories to the treaty.

6. The Hague Convention provides at Article 10 that:

> In executing a Letter of Request the requested authority shall apply the appropriate measures of compulsion in the instances and to the same extent as are provided by its internal law for the execution of orders issued by the authorities of its own country or of requests made by parties in internal proceedings.

Furthermore, Article 9 of the Hague convention provides, in pertinent part, that "[t]he judicial authority which executes a Letter of Request shall apply its own law as to the methods and procedures to be followed" and that a "Letter of Request shall be executed expeditiously."

7. Title 28, United States Code, Section 1782 sets forth the authority of this court to order the production of evidence for use in a proceeding in a foreign country. A stated purpose for

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[1] Counsel from DePaul University's legal department contacted the government on September 29, 2011, and advised that a court subpoena was required in order for DePaul to release the requested records.

which Congress enacted the statute was "to improve United States judicial procedures for . . . obtaining evidence in the United States in connection with proceedings before foreign and international tribunals." 1964 U.S. Code Cong. & Ad. News 3782. *See In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago*, 648 F. Supp. 464, 466-67 (S.D. Fla. 1986), *aff'd* 848 F.2d 1151 (11th Cir. 1988), *cert. denied*, 488 U.S. 1005 (1989). Pursuant to § 1782, the federal district court has authority to order a person residing within its district to give testimony or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. The court may direct that the testimony be given or the document or other thing be produced before a person appointed by the court. By virtue of his appointment, the person appointed has power to administer any necessary oath and take the evidence on behalf of the foreign tribunal. 28 U.S.C. § 1782.

8. The letter of request and the questions to be answered under oath were transmitted to the Office of Foreign Litigation, Civil Division, Department of Justice in Washington, D.C. under the Hague Convention.

9. The letter of request was executed by a district court judge in Bialystok, Poland, and transmitted to the Justice Department to serve DePaul University with the attached Polish district court documents.

10. A draft order is attached hereto and will be submitted by email as well.

WHEREFORE, the United States petitions this court pursuant to 28 U.S.C. § 1782 to compel the statement of DePaul University for the above-stated reasons and to appoint the undersigned Assistant United States Attorney or another AUSA standing in her place as commissioner for purposes of providing judicial assistance and executing the letters of request from the court in Bialystok, Poland.

Respectfully submitted,

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